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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**
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9 ROBERT MARC LEEDS,

10 Petitioner,

11 vs.

12 WARDEN BACA, *et al.*,

13 Respondents.
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Case No. 3:15-cv-00261-LRH-VPC

ORDER

15 This action is a petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254 by a
16 Nevada state prisoner represented by counsel.

17 On February 16, 2016, petitioner filed a motion for leave to file a third amended petition.
18 (ECF No. 24). On the same date, petitioner filed a second amended petition and exhibits in support
19 of the same. (ECF Nos. 12-23). In the motion for leave to file a third amended petition, petitioner's
20 counsel states that since entering a notice of appearance on November 30, 2015, counsel diligently
21 attempted to obtain the state record to assess the timeliness of an amended petition. Counsel
22 determined that the statute of limitations in petitioner's case may run as soon as February 25, 2016.
23 Counsel explained that to ensure the timeliness of petitioner's claims, a second amended petition
24 was filed along with the motion for leave to file a third amended petition. Petitioner then sought an
25 extension of time up to and including June 15, 2016, to file a third amended petition. (ECF No. 32).
26 Petitioner later sought an extension of time up to and including July 14, 2016, to file a third
27 amended petition. (ECF No. 34). Petitioner filed a third amended petition on July 14, 2016. (ECF
28 No. 35).

1 Respondents originally did not oppose petitioner's motion to file a third amended petition.
2 (ECF No. 27). Later, after petitioner filed a third amended petition, respondents filed a
3 supplemental response on July 26, 2016, in which they oppose the filing of the third amended
4 petition. (ECF No. 41). On August 8, 2016, respondents filed a motion for leave to file a
5 supplemental opposition. (ECF No. 44). The motion for leave to file a supplemental opposition is
6 granted, to the extent that this Court has considered respondents' arguments.

7 The Court has reviewed all of the parties' arguments for and against granting leave to
8 amend. (ECF Nos. 24, 27, 29, 41, 43, 44, 45, 46). The Court should freely give leave to amend
9 when justice so requires. Fed. R. Civ. P. 15(a)(2). The Court agrees with petitioner that, generally,
10 a case this complex requires several months of review, investigation, and preparation before an
11 adequate amended petition can be filed. At the time of filing the motion for leave to file a third
12 amended petition, petitioner's counsel had not yet had sufficient time to fully investigate the case,
13 review the record, and research the claims. Granting counsel leave to file a third amended petition
14 once counsel has had an adequate opportunity to review the entire record and plead the claims in full
15 serves the interests of justice. The Court rejects respondents' arguments to deny leave to amend.
16 Specifically and most importantly, the Court rejects respondents' supposition that one or more
17 claims within the third amended petition are unexhausted and therefore futile. This Court has not
18 yet had occasion to rule on whether any claims in the third amended petition are unexhausted.
19 Moreover, even if some claims are unexhausted, this does not make them futile. The Court will also
20 need to rule on whether a stay and abeyance is warranted. These questions are better answered once
21 there is a response to the third amended petition and briefing on that response is complete.
22 Petitioner's motion for leave to file a third amended petition is granted in the interests of justice.

23 Petitioner has filed a motion to waive the portion of Local Rule IA 10-3(e) that requires the
24 cover page of each exhibit to include a description of the exhibit. (ECF No. 39). Local Rule IA 1-4
25 permits the Court to waive any of the Local Rules if the interests of justice so require. Petitioner
26 argues that adding descriptors to the cover page of each exhibit is unduly burdensome given the
27 large number of exhibits filed in this case, and given the limited resources of the Office of the
28 Federal Public Defender. Petitioner has filed an index of exhibits to the amended petitions and each

1 exhibit includes a cover sheet referencing the exhibit by number. The Court finds that the interests
2 of justice are best served by partially waiving Local Rule IA 10-3(e), so that the cover page of each
3 exhibit need not include a description of the exhibit.

4 On July 14, 2016, petitioner filed a motion to seal certain exhibits to the third amended
5 petition. (ECF No. 38). The motion itself was filed under seal, therefore, the next day, petitioner
6 filed an amended motion to seal exhibits, which was not filed under seal and contained the same
7 arguments expressed in the earlier motion. (ECF No. 40). Petitioner seeks permission to file
8 exhibits 142-146 under seal because the exhibits contain confidential information. These exhibits
9 were submitted under seal for *in camera* review. (ECF No. 38, 1-8).

10 While public access to judicial filings and documents is favored, *see Nixon v. Warner*
11 *Communication, Inc.*, 435 U.S. 589, 597 (1978), a party may have a judicial record sealed by
12 demonstrating “compelling reasons” that outweigh the public policy favoring disclosure, including
13 that the records may be used improperly, *see Kamakana v. City and County of Honolulu*, 447 F.3d
14 1172, 1178 (9th Cir. 2006). Exhibits 142 and 146 contain petitioner’s confidential medical
15 information. Exhibits 143-45 were sealed in the state court and were only released by the state
16 courts with the provision that they would remain confidential. The potential harm to petitioner’s
17 interests outweighs the public’s right to access Exhibits 142-146. Petitioner has made an adequate
18 showing of compelling reasons to keep Exhibits 142-146 sealed. The Court therefore grants
19 petitioners motions to keep Exhibits 142-146 filed under seal.

20 Respondents seek an order granting a 45-day enlargement of time, from the date the Court
21 decides petitioner’s motion to file a third amended petition, in which to file and serve their response
22 to such petition. (ECF No. 31). Good cause appearing, respondents’ motion for an extension of
23 time is granted.

24 **IT IS THEREFORE ORDERED** that respondents’ motion for leave to file a supplemental
25 opposition (ECF No. 44) is **GRANTED**.

26 **IT IS FURTHER ORDERED** petitioner’s motions for extensions of time to file a third
27 amended petition (ECF Nos. 32 & 34) are **GRANTED**.

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1 **IT IS FURTHER ORDERED** petitioner's motion for leave to file a third amended petition
2 (ECF No. 24) is **GRANTED**.

3 **IT IS FURTHER ORDERED** that petitioner's motion to partially waive Local Rule IA 10-
4 3(e) (ECF No. 39) is **GRANTED**.

5 **IT IS FURTHER ORDERED** that petitioner's motions to seal (ECF Nos. 38 & 40)
6 Exhibits 142-146 are **GRANTED**. The Clerk of Court shall keep Exhibits 142-146 (ECF No. 38, 1-
7 8) filed under seal.

8 **IT IS FURTHER ORDERED** that respondents' motion for an extension of time (ECF No.
9 31) in which to file a response to the third amended petition is **GRANTED**. Within **45 days** from
10 the date of service of this order, respondents **SHALL FILE** a response to the third amended
11 petition.

12 **IT IS FURTHER ORDERED** that if and when respondents file an answer, petitioner shall
13 have **forty-five (45) days** after service of the answer to file and serve a reply.

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15 DATED this 21st day of August, 2017.

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18 LARRY R. HICKS
19 UNITED STATES DISTRICT JUDGE
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